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ALEXANDER L. STEVAS,
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

ALAN DALE PHILLIPS,
Petitioner

v.

UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

JOSEPH R. CAPRIO, Record Counsel
704 Main Street
P.O. Box G
West Point, Virginia 23181
804-843-3656
For Petitioner Phillips

QUESTIONS PRESENTED

I. Whether the lower court erred in denying the defendant's motion to dismiss the indictment against him which motion was based on prejudice to defendant's constitutional rights to a fair trial because of the discriminatory composition and selection of grand jury forepersons?

A. Do the Sixth Amendment and the Jury Selection Act of 1968, 28 USC 1861, et seq, require that grand jury foremen represent a "fair cross section" of the community, just as this representation is required in grand and petit jury venires?

B. Does the "equal protection" component of the Fifth Amendment due process clause entitle a criminal defendant to be tried on an indictment

which is returned by a grand jury which is untainted by invidious discrimination and does this right encompass the selection of the grand jury foreman.

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REFERENCE TO OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is United States v. Alan Dale Phillips, No. 82-5212, unpublished, Appendix A (A.1-5), argued December 10, 1982 and decided February 11, 1983.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit entered its judgment on February 11, 1983, affirming the United States District Court for the Eastern District of Virginia, Norfolk Division.

The jurisdiction of this Court is invoked pursuant to 28 USC 1861, et seq.

CONSTITUTIONAL PROVISIONS
AND STATUTES

The relevant provisions are: United States Constitution, Amendment VI; 28 USC 1861, et seq. Each provision is set out in full in Appendix F (A.134).

STATEMENT OF THE CASE

The Appellant, Alan Dale Phillips, was arrested on February 9, 1982. He was subsequently indicted on February 8, 1982 for violating 21 U.S.C. 846 (drug conspiracy), 21 U.S.C. 841 (a) (1) and (b) (1) (Possession with intent to distribute) and 21 U.S.C. 952 (importing marijuana). On March 4, 1982, Appellant filed a motion to dismiss his indictment (See Appendix B, A. 6 - 10) based on a discriminatory history of selecting grand jury forepersons in the Norfolk District. After hearing testimony on March 31, 1982, The Honorable Richard B. Kellem denied the motion on April 5, 1982, (See Appendix E., A.85-A.133) motion was denied, the Appellant waived a jury, plead not guilty and entered

into a written stipulation of the evidence. He was found guilty by the Honorable John MacKenize of the District Court for the Eastern District of Virginia-Norfolk Division. Defendant was sentenced to 6 years on 21 U.S.C. 846 (drug conspiracy), 6 years on 21 U.S.C. 841 (a) (1) and (b) (1) (possession with intent to distribute) and 5 years on 21 U.S.C. 952 (importing marijuana). Notice of Appeal and Assignment of Error were timely taken.

The Appellant's appeal is based solely upon the denial of his pretrial Motion to Dismiss Indictment against him.

All the defendants indicted in this matter submitted a joint Motion to Dismiss the Indictment against them and on March 31, 1982, at the hearing on this motion, they introduced the testi-

mony of John Lamberth, a group dynamics expert, who testified as to the existence of per se discrimination in the selection of grand jury forepersons and the effect this discrimination had on the impartial effective representation of the jury system in this district. Reference is hereby made to the transcript of that hearing and to the twenty-two page statistical report which was submitted to the court at that hearing and which contained the chronological-statistical breakdown of grand jury forepersons over a nine (9) year period. (See attached Appendix D, A.37-A.84).

REASONS FOR GRANTING THE WRIT

I.

WHETHER THE LOWER COURT ERRED IN DENYING THE DEFENDANT'S MOTION TO DISMISS THE INDICTMENT AGAINST HIM WHICH

MOTION WAS BASED ON PREJUDICE TO DEFENDANT'S CONSTITUTIONAL RIGHTS TO A FAIR TRIAL BECAUSE OF THE DISCRIMINATORY COMPOSITION AND SELECTION OF GRAND JURY FOREPERSONS.

The Sixth Amendment and Jury Selection and Service Act of 1968, 28 U.S.C. 1861, et seq, guarantees all defendants in criminal cases a "speedy and public trial by an impartial jury." The requirement of an impartial grand jury has been interpreted to mean a jury composed of members drawn from a "fair cross-section of the community."

"There is a constitutional right to a jury drawn from a group which represents a cross-section of the community. And a cross-section of the community includes persons with varying economic and social positions. Under our Constitution, the jury is not to be made the representative of the most intelligent, the most wealthy or the most successful, nor of the least intelligent, the least wealthy, or the least successful. It

is a democratic institution, representative of all qualified classes of people. Fay v. New York, 332 U.S. 261, 299-300 (1947) (Murphy J. dissenting). See also United States v. Jenison, 485 F. Supp. 655, 660 (S.D. Fla. 1979). Duren v. Missouri, 439 U.S. 357 (1979); Casteneda v. Partida, 430 U.S. 482 (1977); and United States v. Holman, 510 R. Supp. 1175, 1177 (N.D. Fla. 1981).

Our notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government. For it is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. Smith v. Texas, 311 U.S. 138 (1940).

And, its exercise must always accord with the fact that the proper functioning of the jury system, and indeed, our democracy itself, requires that the jury be a "body truly represen-

tative of the community," and not the organ of any special group or class. If that requirement is observed, the officials charged with choosing...jurors may exercise some discretion to the end that competent jurors may be called. But they must not allow the desire for competent jurors to lead them into selections which do not comport with the concept of the jury as a cross-section of the community. Tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will insure a trial by a representative group are undermining processes weakening the institution of jury trials and should be sturdily resisted. Glasser v. United States, 315 U.S. 60 (1942); See also Thiel v. Southern R.R.Co., 328 U.S. 217, 220, (1946); Ballard v. United States, 329 U.S. 187, 195 (1946).

The reason behind the requirement is, of course, the eradication of bias, prejudice, unfairness and partiality. The requirement is binding through the "due process" and "equal protection" clauses of the Fourteenth Amendment.

Billingsley v. Clayton, 359 F.2d 13, 15-16 (5th Cir. 1966), cert. den. 385 U.S. 841.

No principle could be more firmly established nor more basic to the American system of justice than that a jury must be a body truly representative to the community and the Supreme Court has consistently so ruled; Smith v. Texas, supra, 311 U.S. at 130; Glasser v. United States, supra, 315 U.S. at 85-86; Atkins v. Texas, 325 U.S. at 220; Fay v. New York, supra, 332 U.S. at 229-300; Cassell v. Texas, 339 U.S. 282 (1950); Hernandez v. Texas, 347 U.S. 475, (1954); Taylor v. Louisiana, 419 U.S. 522, (1975).

That this principle applies equally to Grand and Petit Juries has been decided and affirmed in Carter v.

Green County, 396 U.S. 320, 557-558 (1970); Cassell v. Texas, *supra*, 339 U.S. at 291; Brown v. Allen, 344 U.S. 443, 474, (1953); Pierre v. Louisiana, 306 U.S. 354, 358, (1939); Alexander v. Louisiana, 405 U.S. 625, 545-546 (1972) (Douglas J. concurring); Brooks v. Beto, 366 F. 2d 1 (5th Cir. 1966), cert. den. 386 U.S. 975, reh.den. 386 U.S. 1043; Witcher v. Peyton, 405 F.2d 725 (4th Cir. 1969).

This Appellant does not maintain, nor would case law support the proposition that a jury panel, Grand or Petit, must be an accurate and complete representation of all of the groups and categories that comprise a modern heterogeneous community, because fulfilling such a requirement would be virtually impossible. The case law is, however, unmistakably clear that when the ex-

istence of any definable class is shown and it is further shown that class has been systematically excluded from jury service, not based on some reasonable ground for such exclusion, the Fourteenth Amendment's demands have been violated. Hernandez v. Texas, supra, 347 U.S. at 478; Arnold v. North Carolina, 376 U.S. 773, (1964), Eubanks v. Louisiana, 365 U.S. 584, (1958); Norris v. Alabama, 294 U.S. 587, (1935); Patton v. Mississippi, 332 U.S. 463, (1880). In short, "a jury is a democratic institution and as such must be representative of all qualified classes of people." Fay v. New York, supra, 332 U.S. at 300; Witcher v. Peyton, supra, 405 F.2d at 727; Labat v. Bennett, 365 F.2d 698, 722 (5th Cir. 1966), cert. den. 386 U.S. 991.

The case law which pioneered the "exclusion" principal emanated, basically, from the struggle of black people in the United States to achieve equal status within the legal system. It is not, therefore, surprising to find that the mass of case law concerning group exclusion from juries, Grand and Petit, deals with the systematic exclusion of "Negroes." It has now beyond doubt, however, that the principles enunciated in those cases are not restricted to the "white/black" issue, but apply with equal force and logic to any exclusion of a "definable class" within the geographic area of selection:

Although the Court has had little occasion to rule on the question directly, it has been recognized since Strauder v. West Virginia, 100 U.S. 303, (1879), that the exclusion of a class of persons from jury service on grounds

other than race or color may, also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws. The State of Texas would have us hold that there are only two classes-white and black- within the contemplation of the Fourteenth Amendment. The decisions of this court do not support that view...

Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws. But community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. Hernandez v. Texas, supra, 347 U.S. at 477-478 (Warren C.J.); Accord: Hoyt v. Florida, 368 U.S. 57, 59-60, (1961).

Thus by substituting the names of other classifications without our society for the word "Negroes," as found in the overwhelming number of applicable cases, the true thrust and meaning of the Constitution's and Court's commands can be more easily and accurately understood.

Once a defendant can show an identifiable group and that such group is statistically underrepresented, then, even without the presumption of discrimination which attaches to the jury selector's failure to uncover the source of competent jurors from all significantly identifiable elements of the community, the burden of proof shifts to the government and it is incumbent upon the government to show by rebuttal evidence a constitutionally

acceptable explanation for the discrepancies which give rise to the inference to deliberate and intentional discrimination. Alexander v. Louisiana, 405 U.S. 625, 545-546, (1972), Eubanks v. Louisiana, 356 U.S. 584, 587, (1958); Hernandez v. Texas, 347 U.S. 475, 480, (1954), Hill v. Texas, 316 U.S. 400, 405 (1942); Turner v. Fouche, 396 U.S. 436, 361, (1970), See Also: Cassell v. Texas, 339 U.S. 202, (1950); Ross v. Texas, 341 U.S. 918, (1951); Smith v. Texas, 311 U.S. 128, 130, (1940); Labat v. Bennett, 365 F. 2d 658, 719 (5th Cir. 1966), cert. den., 386 U.S. 991; United States v. Butera, 420 F.2d 564, 570 (1st Cir. 1970). And if the explanation of the government is insufficient to constitutionally justify the prima facie case of the

defendant, there need be no showing of intent to discriminate as the intent is presumed, Whitus v. Georgia, 385 U.S. 545, 552 (1967); Hernandez v. Texas, 347 U.S. 475 (1954); Alexander v. Louisiana, 405 U.S. 625, (1972); Norris v. Alabama, 294 U.S. 587, 593, (1935); Witcher v. Peyton, 405 F.2d 725, 730 (4th Cir. 1969) for it is not intentional discrimination which is the measure but only the methods employed and the actual results. Witcher v. Peyton, supra, 405 F.2d at 730. Nor is it necessary to show prejudice in any individual case where a distinct group is shown to have been systematically excluded, for the injury..."is not limited to the defendant - there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic

ideal reflected in the process of our courts." Ballard v. United States, supra, 329 U.S. at 195.

- A. Do the Sixth Amendment and the Jury Selection and Service Act of 1968, 28 USC 1861, et seq. require that grand jury foremen represent a "fair cross-section" of the community, just as this representation is required in grand and petit jury venires.

Even though few courts have addressed the question of whether the "fair cross-section" analysis is applicable to the office of federal grand jury foreman, and the Jury Selection and Service Act of 1968 does not specifically refer to the office of grand jury foreman, the court in United States v. Holman, 510 F. Supp. 1175 (N.D. Fla. 1961) clearly indicated that the "fair cross-section" test is

applicable and set forth the test:

To prove that a Sixth Amendment violation has occurred in the context of grand jury forepersons selection, the defendant must show:

(1) That the group alleged to be excluded is a "distinctive" group in the community;

(2) That the representation of this group (in the office of the grand jury person)... is not fair and reasonable in relation to the number of such persons in the community; and,

(3) That this underrepresentation is due to the systematic exclusion of the group in the jury selection process.

Duren vs. Missouri, 439 U.S. 357, 364, (1979); United States vs. Holman, supra, 510 F. Supp. 1175, 1177.

As with de facto discrimination in the selection of grand and petit jury members, so too a defendant who charges discrimination in the selection of grand jury forepersons is not re-

quired to show bad faith, and a prima facie showing may not be rebutted by the government using proof of nondiscriminatory intent. United States vs. Jenison, 485 F. Supp. 655, 660, (S.D. Fla. 1979); United States v. Holman, supra at 1177-1178, Systematic disproportion by itself will demonstrate an infringement of defendant's rights under the Sixth Amendment and the provisions of the Jury Selection and Service Act of 1968, 28 U.S.C. 1861, et seq. United States v. Jenison, supra, at 660.

"Once the defendants have made a prima facie showing of substantial underrepresentation, the state (government) may only rebut the prima facie case by showing that a significant state interest is advanced by the procedure which results in the exclusion.

Duren v. Missouri," United States vs. Holman, supra citing Duren v. Missouri, supra, at 1178.

In the past the courts which have adopted the government's position that the protections of the Sixth Amendment and Jury Selection Act's "fair cross section" requirement are not applicable to the office of grand jury foreperson, have always done so only after the defendant was unable to factually show that the "impact of the grand jury foreperson is so substantial as to influence or alter the unique qualities and characters of the jury's individual members." See eg. United States v. Layton, 519 F. Supp. 946, 957 (N.D. Cal. 1981); United States v. Jenison, 485 F. Supp. 655, 661-662 (S.D. Fla. 1979); United States v. Breland, 522 F. Supp. 468

474-475 (N.D. Ga. 1981).

Evidence sufficient to establish that prima facie discrimination had taken place in the selection of grand jury forepersons in the grand juries for the Norfolk Division of the United States District Court for the Eastern District of Virginia was presented during the testimony of John Lamberth. This testimony was given on March 31, 1982, at the hearing on the motion to dismiss held before Honorable Richard Kellam. For purposes of establishing that such discrimination did exist and the effects that such discrimination has on the decision-making process of the grand jury, specific reference is made to Appendix C, A.11-36, which is a true copy of that pre-trial motion testimony.

The district court erred, then, in

not approving the defendant's Motion to Dismiss in light of this evidence, not only because of the requirements of the Sixth Amendment and Jury Selection and Service Act of 1968, but also because of the rules which this court has ab initio established to prove that such discrimination occurred. Under the holding in Peters v. Kiff, 407 U.S. 493, 503 (1972); and Rose v. Mitchell, 443 U.S. 545, (1979) this indictment should have been dismissed by the District Court.

- B. Does the "equal protection" component of the Fifth Amendment "due process" clause entitle a criminal defendant to be tried on an indictment which is returned by a grand jury which is untainted by invidious discrimination and does this right encompass the selection of the grand jury foreperson.

Regardless of how this court rules

regarding the defendant's claim that the Sixth Amendment and Jury Selection and Service Act were violated by the underrepresentation of blacks and women as grand jury forepersons, and that this underrepresentation had demonstratable impact on the jury process in general and the potential outcome of the grand jury which indicted defendant in particular, this court must still decide the defendant's Fifth Amendment claims. See, United States v. Perez-Hernandez, ____ F.2d ____, Slip Op., No. 80-5165, 31 Cr. L. 2110 (11th Cir., April 15, 1982); United States v. Jenison, supra; United States v. Breland, supra.

In Rose v. Mitchell, the Supreme Court assumed without deciding that "discrimination with regard to the selection of only the foreman requires

that a subsequent conviction be set aside, just as if the discrimination proved had tainted the selection of the entire jury venire," 443 U.S. at 551 n. 4. That assumption has been accepted twice by judges of Circuit Court of Appeals, Guice v. Fortenberry, 661 F. 2d 496 (5th Cir. 1981) (en banc); Williams v. State of Mississippi, 608 F.2d 1021 (5th Cir. 1979). "If convictions must be set aside because of taint of the grand jury, we see no reason to differentiate the result because discrimination affected only the foreman." Guice v. Fortenberry, 661 F.2d at 499. A government argument that cases, such as Rose v. Mitchell, supra, only dealt with a state grand jury procedure and not a federal one and therefore is inapplicable to federal forepersons has been

rejected by every court but one which has expressly reached the issue. See e.g. United States v. Perez-Hernandez, supra at 886; United States v. Jenison, supra at 661; United States v. Breland, supra at 447.

In order to prevail in a Fifth Amendment challenge, the defendant must demonstrate purposeful exclusion of cognizable classes from the office of grand jury foreperson. Specifically, to prove this prima facie case the defendant must show:

- (1) that the group allegedly discriminated against is a recognizable, distinct class singled out for different treatment under the laws, as written or as applied;
- (2) that the group has been substantially underrepresented over a significant period of time; and,
- (3) that the selection procedure is not racially neutral or susceptible to being used as a tool of discrimination.

Rose v. Mitchell, supra at 565; United States v. Jenison, supra at 662; United States v. Perez-Hernandez, supra at 887. Accord: United States v. Holman, supra. Castaneda v. Partida, 430 U.S. at 494.

Once a prima facie case is made by the defendants, the burden shifts to the government to rebut that prima facie case, Rose v. Mitchell, supra at 565, Castaneda v. Partida, supra at 497; United States v. Jenison, supra at 665; United States v. Perez-Hernandez, supra at 887.

Using the above criteria, the defendant makes a prima facie case as follows: first, that the discrimination has involved distinct and identifiable classes.

There can be no dispute that women and blacks have long been recognized as distinct classes subject to different

treatment under the law. See Hernandez v. Texas, 347 U.S. 475 (1954); Taylor v. Louisiana, supra at 531; United States v. Jenison, supra at 662; United States v. Manbeck, 514 F. Supp. 148 (1981); United States v. Holman, supra at 1179; United States v. Breland, supra at 478. Sufficient evidence was introduced at the pre-trial hearing on the Motion to Dismiss the Indictment to establish a substantial underrepresentation of women over a significant period of time.

Out of twenty-two grand jury forepersons selected over a nine year period, only three were women. In other words, although forty-four percent of the venire were women, only fourteen percent of those selected to be forepersons were women. This dispartiy,

according to the expert introduced at the pre-trial hearing and accepted by the government as an expert in statistical interpretation, has a chance of occurring less than 8/1000, or less than eight times in a thousand "one would expect that this occurrence could occur by chance." (Appendix C,A. 19-22). This disparity clearly satisfies the first part of the prima facie test. See Turner v. Fouche, 396 U.S. 346 (1970).

Secondly, the facts and affidavit introduced at the pre-trial hearing (Appendix D,A.37-84) demonstrate that this disparity continued over a significant period of time and therefore affected the defendant's rights to "equal protection" and "impartial selection of jurors" to which all defendants are entitled under the United

Constitution. The existence of this disparity over so long a period of time satisfies the second part of the prima facie test. See Castaneda v. Partida, supra; Duren v. Missouri, supra; United States v. Perez-Hernandez, supra (5 years); United States v. Jenison, supra at 663, n. 3 (5 years); United States v. Manbeck, supra at 148 n.10(8 years).

In determining whether there was an unconstitutional underrepresentation of women, this Court should examine the evidence introduced during the pre-trial hearing. This testimony sets forth the absolute and comparative disparities that existed for women during the relevant time frame. 1/

1 / In United States v. Jenison, supra at 663, n. 5,6, the Court defined these terms as follows:

Absolute disparity is "calculated by subtracting the percentage of (a class) who served as grand jury forepersons from the percentage of (that

1 / continued:
class) in the general population."

Comparative disparity is "calculated by determining the percentage difference between the minority composition in the office in question and its proportion in the general population.

Where, for example, blacks comprise twenty percent of the presumptively eligibles, their appearance on ten percent of the venires can be viewed as a ten percent deviation under the absolute view. Although the preferable view is that an absolute measure may, in certain circumstances, also produce distorted results.

Clearly, the absolute measure should not be inflexibly applied to foreclose a prima facie case where its utilization may distort the significance of the figures shown. With the percentages in this case the comparative measure is least likely to distort the significance of the deviation and most likely to adequately protect the interests of the selection system and those who challenge it.

Finally, the method used by the judges of the Eastern District of Virginia for selecting the forepersons was and is susceptible to abuse. A judge personally selected the foreperson after the grand jury was empaneled.

Each judge, therefore, was able to determine both the race and sex of the grand jury members from either visual observation or the questionnaires filled out by the grand jurors before he made his selection. See Alexander v. Louisiana, supra at 630-632; Castaneda v. Partida, supra at 495; United States v. Holman, supra at 1179, United States v. Manbeck, supra at 148; United States v. Breland, supra at 478; United States Jenison, supra at 663; Accord: United States v. Perez-Hernandez, supra at 887.

The defendant at the pre-trial hearing, therefore, established a prima facie case of discrimination. The burden then shifted to the government to rebut that presumption of invidious discrimination and of the significance

such discrimination had on the decision-making process of the grand jury. At no time during the hearing or subsequently has the government discharged its rebuttal burden. The government introduced no testimony to explain or justify the discrimination. No testimony as to the guidelines used in selecting the foreman has been given as in United States v. Jenison, supra; or United States v. Perez-Hernandez, supra. This instant case presents this court with a set of circumstances more closely eligned to Turner v. Fouche, supra, at 361, where arbitrary stereotypes were used in the selection process. (i.e. men are more able to lead and control the grand jury).

As the court in United States v. Perez-Hernandez, supra at 888, stated, "Had the record in this case shown

that these judges abused their discretion by selecting foremen without regard to the (extensive and tack-related) criteria, or by excluding equally qualified blacks and women, then we would conclude that the presumptions established by the prima facie test was not rebutted."

The defendant asserts that he in this incident was provided the court with the kind of evidence to establish that the gender and racially neutral selection procedures required by the Fifth Amendment were not in fact applied in a neutral manner. The defendant accordingly asks this Court to grant his motion to dismiss his indictment and conviction on constitutional grounds.

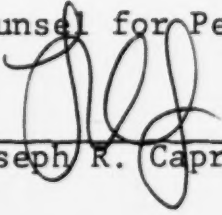
CONCLUSION

The Court has yet to decide this particular issue and there exists now a difference of opinion among the Circuits and this should be resolved by a ruling from this Court.

Respectfully submitted,

ALAN DALE PHILLIPS
Petitioner

Counsel for Petitioner:



Joseph R. Caprio, Record Counsel

JOSEPH R. CAPRIO, P.C.
704 Main Street
P. O. Box G
West Point, VA 23181

CERTIFICATE OF SERVICE

I hereby certify that on this
2 day of May, 1983,
three true and accurate copies of this
Petition for Writ of Certiorari to
the United States Court of Appeals for
the Fourth Circuit was mailed, first
class, postage prepaid, to the Office
of the Solicitor General, Department
of Justice, Washington, D.C.



Joseph R. Caprio
Record Counsel

APPENDIX

- A. United States v. Phillips,
No. 82-5212 (4th Cir.
1983)..... A.1
- B. United States v. Ravenel,
No.82-12-N (4th Cir.
March 5, 1982)
Motion to Dismiss In-
dictment.....A.6
- C. United States v. Alexander, et al
No. 82-14-N (4th Cir.
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Transcript, Record Ex-
certs, Testimony of John
Lamberth, March 31, 1982
pp. 1-39.....A.11
- D. United States v. Alexander, et al
No. 82-14-N (4th Cir.
March 31, 1982)
Affidavit.....A.37
- E. United States v. Alexander, et al
No. 82-14-N (4th Cir.
March 31, 1982)
Order and Affidavits.....A.85
- F. Constitutional Provisions
and Statutory Provisions.....A.134

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 82-5212

UNITED STATES OF AMERICA,
Appellant,

v.

ALAN DALE PHILLIPS
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA, AT NORFOLK

[HON. JOHN A. MACKENIZE,
Chief District Judge]

Before
WIDENER and HALL, Circuit Judges
BUTZNER, Senior Circuit Judge

Joseph R. Caprio for Appellant,
William G. Otis, Special Assistant
United States Attorney (Elsie L. Munsell
United States Attorney, David P. Baugh,
Assistant United States Attorney, on
brief) for Appellee.

PER CURIAM:

The male defendant was indicted and convicted of conspiracy to import, to possess with intent to distribute and to distribute marijuana; of possession with intent to distribute; and of the importation of marijuana, in violation respectively of 21 U.S.C. §§ 846, 841 (a) (1) and (b) (1), and 952.

His sole claim on appeal is that the past twenty-two grand juries in the district consisted of 44% women; yet those grand juries had only 14% foreladies, the balance being foremen. Because the judges of the district were male and appointed the presiding officers of grand juries, he argues that the statistics show a systematic exclusion of women from the position of forelady. See Rose v. Mitchell, 443 U.S. 545 (1979) (exclusion of Negroes from grand and

petit juries although the defendant was white). He bases his argument upon the due process clause.

The difficulty with defendant's case is that the grand jury which indicted him was presided over by a forelady, not a foreman, so whatever exclusion the selection process may have resulted in the past was not present in his case.

Even if we assume, since Rose v. Mitchell states a constitutional rule, that it applies to the presiding officer of federal grand juries, and that it applies to sex as well as race, Phillips, nevertheless, has not brought himself within the rule of Peters for he has not alleged or proven any systematic exclusion from the grand jury which indicted him. In Peters the first sentence of the opinion begins: "Petitioner

alleges that Negroes were systematic-
ally excluded from the grand jury which
indicted him. . . ." 407 U.S. at 494.
The opinion reiterates the claim: ". .
. the tribunals that indicted and con-
victed him were constituted in a manner
that is prohibited by the Constitution.
. . ." 407 U.S. at 497. (Italics added.)

Because Phillips cannot prove any
exclusion of women from being the pre-
siding officer of the grand jury which
indicted him, the presiding officer of
the grand jury which indicted him being
a woman, his case must fail.

It may be true, as the defendant
argues, that other methods of selection
for the presiding officers of grand
juries, such as random choice or elec-
tion by the members thereof, would
make the system less susceptible to
constitutional attack, but we have no

occasion to comment here on their use.

The judgment of the district court
is accordingly

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA NORFOLK DIVISION

No. 82-14-N

UNITED STATES OF AMERICA,
Appellant,

v.

STEPHEN D. RAVENEL,
Defendant

MOTION TO DISMISS INDICTMENT

COMES NOW the Defendant, Stephen D. Ravenel, by and through counsel, pursuant to the Fifth and Sixth Amendment to the United States Constitution, 28 U.S.C., Section 1867 (a), (b), (c), (d) and (e), Rule 6 of the Federal Rules of Criminal Procedure and the Jury Plans of the Eastern District of Virginia, respectively moves this Court for entry of an Order dismissing the indictment

herein and/or staying the proceedings until such time a Grand Jury can be selected in conformity with the law. In support of this motion, the Defendant states as follows:

1. Based on an initial inspection of the Court's records, it appears that of the eight (8) Grand Jury Foremean which have been selected since March of 1979 of present, only one (1) black person was selected and one (1) female was selected. It further appears that of nine (9) Deputy Foremen who were selected during the same period of time, there were six (6) and possibly eight (8) of those individuals who were white and seven (7) of those individuals who were male.

2. The Defendant alleges that these figures demonstrate a pattern and practice in the Eastern District of

Virginia which have resulted in substantial noncompliance with the law and authorize relief to the Defendant.

3. Even if the selection process was not the result of invidious and active discrimination, there has been a substantial and statistically significant underrepresentation of women and non-whites selected as forepersons. This underrepresentation is so grossly disproportionate to these numbers in a fair cross-section of the community that they have been discriminated against as a matter of law and the requirement of foreperson representativeness has been breached.

4. As a result of the individual cumulative and aggregate effects of the foregoing, there has been substantial failure to comply with the law in established Grand Juries in this District,

all in violation of the Fifth and Sixth Amendments to the United States Constitution, the Jury Selection and Service Act of 1968, as amended (28 U.S.C., Section 1861, et. seq.) and the local plan of the United States District Court of the Eastern District of Virginia, all requiring a dismissal of the Indictment.

Prior to a hearing on the motion, Defendant will file a Memorandum in support of this motion with supporting statistical analysis and requests an evidentiary hearing at a time certain.

STEPHEN D. RAVENEL

By/s/ John Zwerling
Of Counsel

John K. Zwerling
108 N. Columbus Street
Post Office Box 1929
Alexandria, Virginia 22313

CERTIFICATE

This is to certify that a true copy of the foregoing was mailed to David Baugh, Assistant United States Attorney, on this 5th day of March, 1982.

/s/ John Zwerling

APPENDIX C

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA
NORFOLK DIVISION

UNITED STATES OF AMERICA

vs.

JAMES DANIEL ALEXANDER, et al

No. 82-14-N

Testimony of John Lamberth

Norfolk, Virginia
March 31, 1982

Before HONORABLE RICHARD B. KELLAM,
Senior United States District
Judge

JOHN LAMBERTH, called as a witness by and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

MR. ZWERLING: Your Honor, I remind the Court that Dr. Lamberth's vita was submitted to the Court and counsel earlier today.

THE COURT: Yes, sir. I'll accept him as an expert without any question.

MR ZWERLING: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. ZWERLING:

Q Doctor, I won't go through your qualifications at this point inasmuch as you've been accepted as an expert in statistics and statistical analysis and compilation.

I ask you if you are familiar with attachments to the affidavit that was

filed, pages 1 through 22?

A Yes.

Q All right. Are those all of the pages that are attached -- twenty-two pages?

A Yes.

Q All right. Now, have you had an opportunity to go over the information contained in those pages?

A Yes, I have.

Q All right. And how many grand juries do these figures reflect?

A They reflect twenty-two grand juries.

Q And the selection of how many foremen?

A Twenty-two.

Q Forepresons, I should say.

And how many veniremen are reflected from which the foremen were selected?

A If I may qualify that slightly,

of those that were able to determine sex
for -- and there were a couple--

THE COURT: You have to speak up.
I can't hear you, Doctor.

THE WITNESS: Of those that we
were able to determine the sex for,
501.

MR. ZWERLING: All right.

BY MR. ZWERLING:

Q How many did you have question
about that you couldn't determine the
sex?

A We had -- I had question about
-- about two or three. It's --

Some of these say "excused," if
you -- if you look at the things, and
it's difficult to tell exactly.

Q All right,

A But the vast majority of people
are accounted for.

Q Two or three out of how many?

A 501 if the number I have.

Q Okay. If the two or three had been all one sex, would that have made any significant difference to your calculations?

A It might have changed -- it conceivably could have changed it by one percent or could have changed the percentage of females or males by one percent, and that would have been due to rounding.

Q All right. Now, you're talking about the number of females who were members of this panel?

A Who are --

Yes, the number of females who are members of the twenty-two separate grand juries.

Q All right. Of the twenty-two forepersons, how many of those were women?

A Three.

Q All right. Would it be fair to say that nineteen were male?

A Yes.

Q Okay. Of the venire that you were able to determine, how many of those were women?

A How many?

There were 222 women.

Q All right. What is the percentage, rounded off to the nearest percent?

A Forty-four percent.

Q Allright. Of the venire, there were forty-four percent women?

A That is correct.

Q And what is the percentage of the forepresons who were women?

A Fourteen percent.

Q And have you been able to determine, separate from the affidavit and these things, these attachments, what

the population of women in the general population -- what percentage of women in the general population?

A Yes.

MR. BAUGH: Objection, Your Honor, until we find out what general --

MR. ZWERLING: All right.

MR. BAUGH: -- population we're talking about.

BY MR. ZWERLING:

Q Of Virginia?

MR. BAUGH: Objection, Your Honor, relevancy.

The pool is not drawn from the general population of the State of Virginia,

BY MR. ZWERLING:

Q What about the Southeastern Regional Planning District?

A Yes.

MR. BAUGH: Objection, Your Honor,

until such time as the parameters of that district are determined.

MR. ZWERLING: Your Honor, I understand the government's objection.

We're not relying on that. I was just going to pat ourselves on the back by showing the Court we took the lower of the two figures, which was the percent of the pool.

It's really not important.

BY MR. ZWERLING:

Q Dealing with the percentage of actual number of women who were forepersons out of their relative population in the venire, what is the absolute disparity?

A Thirty percent.

Q Is it 30 percent underrepresentation?

A Underrepresentation of women, yes.

Q All right.

THE COURT: Of women as to what?

THE WITNESS: As forepersons of
the grand jury.

THE COURT: I know. But in what
area are you talking about?

Where were these figures derived
from?

THE WITNESS: The figures were
derived from the Newport and -- pardon
me -- Norfolk and Newport News Divisions
of -- of the -- I believe it's the
United States District Court for the
Eastern District of Virginia.

MR. ZWERLING: All right.

BY MR. ZWERLING:

Q Now, was there any major dis-
parity between the two different areas?

A No, no major disparity.

Q Now, what is the --

Is "statistical significance" a

term of art in the field that you are an expert in?

A Yes, it is.

Q Would you explain what that term means when it is used?

A Yes. Statistical significance means that when an event or series of events occur, there is a probability associated with them occurring by chance. By all -- by conventions within all of the social sciences, it is -- when an event could occur by chance five times or less in a hundred, we say that that is a significantly -- a significant finding, and that is the way we use "significance."

Q What is the statistical significance of the 30 percent disparity in representation that you've mentioned before, based on the numbers that are contained in these affidavits?

A The underrepresentation of women is significant not at the five in a hundred level or the 05 level, as we call it, but at the 008 level, which is eight less than eight times in a thousand and would one expect that this occurrence could occur by chance.

Q Did you go back in Newport News as far back as the clerks were able to provide documents to you?

A Yes.

Q And the ten-year cutoff in Norfolk, was that arbitrarily set?

A Yes.

MR. ZWERLING: I have no further questions.

THE COURT: Let me inquire of one or two, to be sure I understand it.

How many times did you say you found a woman had been selected as foreman?

THE WITNESS: Can you wait a moment?

I did not compute deputy foreperson. I can --

MR. ZWERLING: I would ask that remark be stricken, Your Honor.

If his questions aren't relevant, he shouldn't be asking them.

BY MR. BAUGH:

Q Sir, have you ever in your life, for whatever purpose, made a determination as to how many votes a foreman or a deputy foreman would have as to whether to true bill or no bill in relation to other members of a grand jury?

A No.

MR. ZWERLING: I also would object, Your Honor, to that question on relevance. It doesn't matter whether they have but one vote or no votes.

We don't have --

It's not a burden to show prejudice. It has been established by the Supreme Court, the Fifth Circuit en banc, quoting the Supreme Court, that we have a three-part test to meet:

One, that there is -- there is a group that we are complaining about being underrepresented, that is, a cognizable group, that is either based on race, sex, national origin, et cetera.

Certainly sex is one. He's testified to that.

We then need to show that there is a significant underrepresentation. And the courts have picked out an arbitrary 10 percent absolute disparity. They've also picked out a five percent chance -- a one in twenty chance of it happening by chance to be significant -- statistically significant, and that

once we have established all three things, that is all we have to show. We don't have to show there was actual prejudice to the defendant. We don't have to show that he was even a member of the minority that was being excluded. We don't have to show that the foreman voted or didn't vote or voted three times to stuff the ballot box, or anything else. We don't have to show that because the Supreme Court's already ruled that it is -- the constitutional issue here, that is, a person have a grand jury with a foreperson that is selected in conformity with the due process right, is so overwhelming --

THE COURT: Well, where is there anything in the Constitution concerning the selection of a foreman?

MR. BAUGH: I cannot find one case, Your Honor, where it says that anybody

has a constitutional right to have a member of a certain group or an even representation of foremen. The act refers to veniremen and members of the pool.

MR. ZWERLING: Well, this is just an objection to a question, Your Honor. I don't want to argue the motion at this point.

THE COURT: No, I--

MR. BAUGH: Well, Your Honor, I would like to know --

THE COURT: What I don't understand is what -- what is your complaint here about the grand jury?

I must say I miss what you're saying.

MR. ZWERLING: Your Honor, our complaint is that the selection process, which, in this jurisdiction, the foreperson is selected by the judges, has

produced results where women have been significantly underrepresented as forepersons, and it's our position that that requires the Court to either dismiss the indictment or require -- hold up proceedings until a proper indictment is had,

We rely on the Supreme Court case of *Castaneda versus Partida*, 430 U.S. 482.

THE COURT: In that case they said because there was not an equal representation in selection of the foreman, that the indictment had to be dismissed.

MR. ZWERLING: It says -- Let me quote *Guise*, Your Honor, which deals with this particular portion and quotes the case.

It says: "The prerequisites for federal relief from alleged discrimination in the selection of a grand jury to

establish --"

All right. In that case -- so that's the selection of a grand jury.

THE COURT: Yes.

MR. ZWERLING: All right. Now, Guise talks about those three things in relation to selection of the foreperson and quotes Rose versus Mitchell for the Supreme Court.

Rose versus Mitchell, 443 U.S. 545, says: "Held the racial discrimination in the selection of a grand jury and its forman violates the Fourteenth Amendment and requires the federal court to grant habeas relief whenever --"

In that case it was even reversing a state criminal conviction because it brought in the Fourteenth Amendment.

It wasn't even solely under supervisory powers.

So, clearly, it was of constitu-

tional dimension.

Guise, which is an en banc decision of the Fifth Circuit, November 18, 1981, was a state conviction of individuals challenging solely the selection of the forepreson.

Now, I have -- if the Court wishes not to consider this as precedent -- required to show prejudice, which I don't think we need do -- I would also ask at this time the witness be qualified, as I think he would clearly be -- of course, the Court doesn't know him -- but if it's read his vitae, he would know he's an expert in the dynamics of small group decision-making and the effects of the leader or foreperson in petit juries and the leader in any small group -- the dynamics of it, why there would be prejudice, if I need to, I don't think it's required,

So I guess that's my objection to the question, Your Honor.

THE COURT: All right. Any further questions of the witness, then?

BY MR. BAUGH:

Q Have you ever served on a grand jury?

A No.

Q Are you saying that the selection process, based on what you're seeing now, could not have happened -- mathematically could not have happened at random?

A I'm saying that there's eight chances in a thousand it could have been -- it could have happened randomly, and only eight in a thousand.

Q So you're not saying it couldn't have happened?

A I n the social sciences, when we deal with

Q Do you expect it would be significantly different from -- or do you have --

A It very well might be, I mean, when -- when --

Q All right. Well, let me -- let me backtrack and I'll ask you this.

You have done studies in group dynamics; is that correct?

A Yes.

Q You've taught that, have you?

A I teach sociology and group dynamics as part of it.

Q Would you very briefly relate to the Court what your expertise is in decision-making, small group dynamics?

A Yes, For the last ten years my research area has been in small group decision-making, the influence of individuals in the group and who is the most influential, with particular

emphasis upon petit juries.

THE COURT: Well, you ascribe to that saying that one man with -- one man with courage is a majority or one person with courage -- excuse me -- one person with courage is a majority.

THE WITNESS: I -- I -- I think there are a few of those people still around but not a great many.

MR. ZWERLING: Your Honor, I would offer him as an expert in that field, sociology --

THE COURT: I'll be glad for him to answer any question in the world you wish for him to,

BY MR. ZWERLING:

Q In your expert opinion, do you feel that the selection of a foreman as opposed to deputy foreman -- the selection of the foreman -- has an influence over and above that of just being one

vote on a grand jury?

A Yes, without a doubt,

Q And more so than that of a deputy foreperson or a secretary?

A Yes,

MR. ZWERLING: I have no further questions.

MR. BAUGH: Just a few brief questions,

RECROSS-EXAMINATION

BY MR. BAUGH:

Q You just said that based on your experience, the person being the foreman or deputy foreman has -- that that title would give them power -- the gist of it is?

A No, that is not what I said.

Q Well, then, give it back to me.

A I said that the person who was foreman would have a great deal more influence than would another member of

the grand jury.

Q Influence over what?

A Influence over people in the grand jury.

Q Do you know what a foreman or a deputy foreman does?

Do you know what a foreman or a deputy foreman does?

A I know what their duties are prescribed to be. I do not --

Q Do you --

A I've never been in a grand jury.

Q Tell me what their duties are and how their duties differ from a regular, ordinary, old, run-of-the-mill field hand grand juror.

A They are to administrate. To the extent that they are the leader of the group, they recognize people within the grand jury to ask questions. They are the individual who is to be called

upon when a grand jury cannot be there, and what I am reading -- what I am reciting to you now is actually the Third Circuit's rules on -- on forepersons of grand juries and I may be making some mistakes as to how you do it in the Fourth Circuit. It may be somewhat different. But, in general, they are the administrative leader of the grand jury to the extent that they are the person who's in charge of making sure that it moves smoothly.

Q And does it follow, sir, that the more adminsterial power or responsibility that person has, the more influence they would have?

A Let me respond by saying that in the -- in my research and in the research of other people in the field of sociology, particularly Professor Zeisel (phonetic), who is both a sociol-

ologist and lawyer, and Professor McCullers (phonetic), who is a sociologist, the finding is consistently that in small group work the leader of that group has influence that is three to four times the influence of any other individual within the group.

Q What causes the variable -- three to four times?

Is one of the factors in determining the variable the amount of administrative duties the person has?

A You are asking me what causes it, and I will give you my opinion.

My opinion is that in a grand jury it is caused by the power that is attributed to the individual by the fact that they were indeed appointed by a judge.

They not only are the leader of that group, but indeed they are not an elected leader but one appointed by a

judge.

Q And, of course, that has more impact than if you're elected by the group?

A Yes.

Q All right. Have you ever found a district where

APPENDIX D

AFFIDAVIT

Filed March 31, 1982

Lloyd J. Parker, Jr., Esquire, duly sworn, and upon his oath says:

1. The Clerk of the Court of the United States District Court for the Eastern District of Virginia provided me with lists of the names of each grand jury which had been impaneled and sat from April 9, 1973 to the present, for the Norfolk Division.

2. For the Newport News Division the Clerk provided the name of each grand jury which had been paneled and sat from August, 1976 to the present.

3. The Clerk also provided me with corresponding questionnaires completed by each of the said grand jurors (with the exception of the 1977 questionnaires, which, as to the Norfolk Division were

not located).

4. From the information gathered from the above records, I identified the race and sex of the grand jurors on the attached twenty-two sheets as accurately and faithfully as possible.

/s/ John J. Parker, Jr.

Subscribed and sworn to before me this
31st day of March, 1982.

/s/George R. Old
Notary Public

Commission expires: 2/12/84

GRAND JURY - APRIL 19TH, 1973

	9	10	11	12	M
1. R. Braxton Hill, Jr., Foreman	✓	✓	✓	✓	
2. Ruth B. Watson, Deputy Foreman	✓	✓	✓	✓	F
3. Donald E. Childress, Sr.	✓	✓	✓	✓	M
4. John J. Creech	✓	✓	✓	✓	M
5. Elsie R. Garrison	✓	✓	✓	✓	F
6. John H. Gibbs	✓	✓	✓	✓	M
7. Gracie M. Holland	✓	✓	✓	✓	F
8. Earl W. Jones	✓	✓	✓	✓	M
9. Larry K. Kowalsky	✓	✓	✓	✓	M
10. Marva Langaster	✓	✓	✓	✓	F
11. Norma Lankford	✓	✓	✓	✓	F
12. Jackie Ray Murphy	Absent				F
14. Lois M. Nelson	Excused				F
15. Sylvia B. Norman	✓	✓	✓	✓	F
16. John M. Parsons	✓	✓	✓	✓	M
17. Clarence E. Reutlinger	Excused				M
18. Robert M. Rice	✓	✓	✓	✓	M
19. Maxine Sampson	✓	✓	✓	✓	F

	9	10	11	12	
20. Marion K. Seebo	✓	✓	✓	✓	F
21. Bette Anne Shepherd	✓	✓	✓	✓	F
22. Myron F. Spring, Sr.	✓	✓	✓	✓	M
23. Richard R. Stringer	✓	✓	✓	✓	M

M = 11

F = 10

GRAND JURY - SEPTEMBER 10, 1973

	10	11	12	13	14	
1. Beatrice Anderson	✓	✓	✓	✓	✓	F
2. James G. Bishop	✓	✓	✓	✓	✓	M
3. Erastus Bobbitt, Jr.	✓	✓	✓	✓	✓	M
4. Isabell M. Buchanan	✓	✓	✓	✓	✓	F
5. Barbara A. Carter	✓	✓	✓	✓	✓	F
6. Geroge C. Daniels	✓	✓	✓	✓	✓	M
7. Robert A. Greer	✓	✓	✓	✓	✓	M
8. Prudence L. Henry	✓	✓	✓	✓	✓	F
9. James B. McCaw, III Deputy Foreman	✓	✓	✓		✓	M
10. Charles H. McCoy, Jr. Foreman	✓	✓		✓	✓	M
11. Dorothy Mae Moseley	✓	✓	✓	✓	✓	F
12. William H. Pate	✓	✓	✓	✓	✓	M
13. Nathan T. Peele, Sr.	✓	✓		✓	✓	M
14. Thelma N. Perry	✓	✓	✓	✓	✓	F
15. Melchizedek Plummer, Sr.	✓	✓	✓	✓	✓	M
16. Julia C. Rodgers	✓	✓	✓	✓		F
17. Dennis H. Sanderlin	✓	✓	✓			M
18. Doris J. Smith	✓	✓	✓	✓	✓	F

	10	11	12	13	14	
19. Bernard A. Wright	✓	✓	✓	✓	✓	M
20. Hiram G. White, Jr.	✓	✓	✓	✓	✓	M
21. Sue R. Dixon Assistant Deputy Foreman	✓	✓	✓	✓	✓	F
22. Burton C. Riedel, Jr.	✓	✓	✓	✓	✓	M
23. Nettie P. White	✓	✓	✓	✓	✓	F

M = 12

F = 10

*Court designated Sue R. Dixon as Asst.
Deputy Foreman (oath readministered).

GRAND JURY - JUNE 15, 1977

	15	16
1. John B. Moore, Foreman	✓	✓ M
2. Eleanor C. McLean, Deputy Foreman	✓	✓ F
3. Margrette A. Adams	✓	✓ F
4. Nora E. Arrington	✓	✓ F
5. Edward Barnes, Jr.	✓	○ M
6. Martha H. Boone	✓	✓ F
7. Doris Bright	✓	✓ F
8. Edna S. Bunting	✓	✓ F
9. Ira W. Carter	✓	✓ M
10. Marguerite C. Cobb	Excused	?M
11. William M. Crace	✓	✓ M
12. James M. Davis	✓	✓ M
13. William H. Godley	✓	✓ M
14. Harrell W. Hall, Jr.	✓	✓ M
15. Vickie E. Harris	✓	✓ F
16. Clyde A. Hughes, Sr.	✓	✓ M
17. Ida M. Johnson	✓	✓ F
18. Joseph J. Lahouchuc	✓	✓ M

	15	16	
19. Juanita A. Noble	✓	✓	F
20. Bennie O. Parke	✓	0	M
21. Robert K. Rickert	✓	✓	M
22. Dolres J. Smith	✓	✓	?F
23. Roy P. Williamson	✓	✓	M
24. Charles E. Ryan	✓	✓	M

M = 14

F = 10

June 15, 1977 - 10:00 to 5:00

June 16, 1977 - 10:00 to 4:00

6/16/77 Jurors
excused subject to
call.

GRAND JURY - SEPTEMBER 21, 1977

	21	22	
1. Guy V. Mallonee, Foreman	✓	✓	M
2. Richard A. Kavanaugh, Deputy Foreman	✓	✓	M
3. Eugene W. Alley	✓	✓	M
4. Midlred G. Basnight	✓	✓	F
5. Joyce D. Berry	✓	✓	F
6. Walter G. Bryan	✓	✓	M
7. Robert E. Delong	✓	✓	M
8. Jules J. Freeman	Excused	✓ O	M
9. Gloria B. Heflin	✓	✓	F
10. Carolyn E. Giles	✓	✓	F
11. Mary Ann Krzak	✓	✓	F
12. William L. O'Connell	✓	✓	M
13. Rena L. Parker	✓	✓	F
14. Lindsay O. Piland	✓	✓	M
15. Emma Rhodes	✓	✓	F
16. Henry C. Roughton	✓	✓	M
17. Michael J. Simcisko	✓	✓	M
18. Mary F. Stowe	✓	✓	F

19. Loraine Tennefoss	21 22	✓ ✓	F
20. Vernon W. Turpin		✓ ✓	M
21. Lawrence W. Wheeler		✓ ✓	M
22. Jack M. Bailey		✓ ✓	M

M = 13
F = 9

GRAND JURY - NOVEMBER 13, 1978

1. Ronnie L. White, Foreman	13 ✓ M ?
2. Betty J. Eisele, Deputy Foreman	✓ F
3. Marie K. Armstrong	✓ F
4. Roy G. Barnes, Jr.	✓ M
5. Frederick F. Bennie	✓ M
6. Ann C. Boothe - Sick	○ F
7. John C. Cherry	✓ M
8. Thomas F. Crews	✓ M
9. Harvard G. Dotson	✓ M
10. Helen J. Friedman	✓ F
11. David W. Hesson	✓ F
12. Rosita T. Hopkins	Excused ○ F
13. Linda V. Jackson	✓ F
14. Michael D. McCall	✓ M
15. Donald L. Manley	✓ M
16. John J. Nichols	✓ M
17. Mary Parham	✓ F
18. Tyler Phillips	✓ M

19. Mary G. Ragin	13 ✓ F
20. Herta E. Russell	✓ F
21. Mary R. Slaughter	✓ F
22. Alphonso W. Stukes	✓ M
23. Gerald E. Thompson	✓ M

M = 12
F = 10

11/13/78

9:30 a.m. to 4:00 p.m.

Grand jurors
excused subject to
call

GRAND JURY - MONDAY, JULY 14, 1975

	14	15	
1. H. Paige Watkinson Foreman	✓	✓	WM
2. William L. Adams	✓	✓	WM
3. Frederick B. Baines	✓	✓	WM
4. Alice P. Bell	✓	✓	BF
5. Freda R. Brunson	✓	✓	WF
6. Constance Boyd	✓	✓	BF
7. Carol E. Carter, Deputy Foreman	✓	✓	WF
8. Mary B. Coleman	✓	✓	BF
9. Beatrice D. Fineman	✓	✓	WF
10. Roy Willis Green	✓	✓	BM
11. Mildred M. Hughes	✓	✓	?F
12. Magdalene H. Johnston	✓	✓	?F
13. William E. Mann	✓	✓	BM
14. Anthony P. Pittas	✓	✓	WM
15. Freddie Rawls	✓	✓	BM
16. Elizabeth A. Sellars	✓	✓	WF
17. Roger Lee Stewart	✓	X	WM
18. Larry Vellines	✓	✓	WM
19. C. W. Whitehurst	✓	X	WM

20. Howard H. McKenzie

14 15
✓ ✓ WM

W = 12
B = 6

F = 9
M = 11

Note 7/15/75

Carol E. Carter - appt'd Deputy Foreman
(oath adminstered)

7/15/75
Grand Jurors excused subject to call.

GRAND JURY - SEPTEMBER 9, 1974

	9	10
1. William L. Adams	✓	✓
2. Frederick B. Baines	✓	✓
3. Alice P. Bell	✓	✓
4. Constance A. Boyd	✓	✓
5. Freda H. Brunson	✓	✓
6. Mary B. Coleman	✓	✓
7. Carol E. Carter	✓	✓
8. Dorothy Lee Dilday	✓	X
Excused for Term		
9. Beatrice D. Fineman	✓	✓
10. Roy Willis Green	✓	✓
11. Robert Spencer Hill	X	X
Absent, Rule to Issue		
12. Mildred Mae Hughes	✓	✓
13. Magdalene H. Johnston	✓	✓
14. Nellie Elizabeth King	X	X
Absent, Rule to Issue		
15. Edwin Marion Leidholdt	✓	X
Excused for Term		
16. William E. Mann	✓	✓
17. Howard G. McKenzie	✓	✓
18. Mildred M. Montgomery	✓	✓
Deputy Foreman		

	9	10
19. Anthony P. Pittas	✓	✓
20. Elizabeth A. Sellars	✓	✓
21. Roger Lee Stewart	✓	✓
22. Larry Wilson Vellines	✓	✓
23. H. Paige Watkinson Foreman	✓	✓
24. C.W. Whitehurst	✓	✓
25. Freddie Rawls	✓	✓

Etta-

*Re-Rule (Hill) Dismissed 9/10/74 (RBK)
Jurors to remain available if later needed- Excused subject to call.

** Re-Rule (King) Dismissed 9/10/74 (RBK)
Jurors to remain available if later needed. Excused subject to call.

GRAND JURY - MAY 6, 1975

	6	7	8	9	
1. Robert J. Morrison Foreman	✓	✓	✓	✓	WM
2. Edith S. Eichelberger Deputy Foreman	✓	✓	✓	✓	WF
3. Marie Anna Adams	✓	✓	✓	✓	WF
4. Larry D. Bailey	✓	✓	✓	✓	WM
5. J. E. Beale	✓	✓	✓	✓	WM
6. Franklin P. Bowden	✓	✓	✓	✓	WM
7. Niles L. Carr	✓	✓	✓	✓	WM
8. Donovan R. Colonna	✓	✓	✓	✓	WM
9. Lee Roy Dixon	✓	✓	✓	✓	WM
10. Kemper J. Gilbert	✓	✓	✓	✓	WM
11. Hannah M. Hawes	✓	✓	✓	✓	BF
12. Mace M. Hurwitz	✓	✓	✓	✓	WM
13. Elijah M. Jones	✓	✓	✓	✓	BM
14. Leona S. Kelley	✓	✓	✓	✓	WF
15. Edith B. Lodge	✓	✓	✓	✓	WF
16. Nancy N. McAdoo	✓	✓	✓	✓	WF
17. James H. O'Berry	✓	✓	✓	✓	WM
18. Alma R. Robinson	✓	✓	✓	✓	WF

	6	7	8	9	
19.Martin Swain	✓	✓	✓	✓	WM
20.Herbert T. Toby	✓	✓	✓	✓	BM
21.Robert F. Wilson	✓	✓	✓	✓	WM

W = 18

B = 3

F = 7

M = 14

5/9/75

Etta - Jurors excused until Monday, June 23, 1975 at 9:30 a.m.

Please send notices

Ray

5/6/75 - 8hrs.

5/7/75 - 8hrs.

5/8/75 - 8hrs.

5/9/75 - 7hrs.

GRAND JURY - SEPTEMBER 8, 1975

1. John H. Babb	✓ ⁸ WM
2. Rawlings M. Barrett	✓ WM
3. William E. Berry	✓ WM
4. Patricia A. Bowman	✓ BF
5. Joyce T. Brown	✓ WF
6. Billy W. Chaplain	✓ WM
7. Joseph F. Condon	✓ ?M
8. Helen W. Davis	✓ WF
9. John Daniel Downing	✓ WM
10. Thomas K. French	✓ WM
11. Anna M. Gilman	✓ WF
12. Edna T. Guill	✓ WF
13. George M. Harris	✓ WM
14. Charlie B. Holcomb	✓ WM
15. Fanny Humphreys	✓ WF
16. Irving C. Jernigan, Foreman	✓ WM
17. Pauline D. Jones	✓ WF
18. Margaret F. Keller	✓ WF
19. Helen W. Kutz, Deputy Foreman	✓ WF

- | | |
|---------------------------------------|------------------|
| 20. James M. Leonard | ✓ WM |
| 21. Kenneth L. Lueke, Jr. | ✓ WM |
| 22. Christeen M. Motley | ✓ WF |
| 23. Julian P. Nixon | ✓ WM |
| 24. Suzanne K. Parker | |
| 25. Virginia B. Pritchard | |
| 26. Aaron C. Ricks | |
| 27. Ellen M. Schmitt | |
| 28. Ramon L. Smouse | |
| 29. Lawrence J. Steinberg | |
| 30. James B. Talbot | |
| 31. William D. Thompson | |
| 32. Oliver S. Tyner | |
| 33. Herman Ward | |
| 34. Fred W. Westmoreland | |
| 35. Nancy E. Aley | |
| 36. Bobby C. Crawford, Police Officer | |
| | Excused for Term |
| 37. Nathaniel H. Simon | |

F = 10 W = 21
M = 13 B = 1

#24 thru #37 Excused subject to call

All Grand Jurors have been sworn

GRAND JURY - SEPTEMBER 13, 1976

	13	14	15	
1. Raymond Allen	✓	✓	✓	WM
2. Inez D. Baker, Foreman	✓	✓	✓	WF
3. Don G. Beek	✓	✓	✓	WM
4. Connie D. Bonniwell	✓	✓	✓	WF
5. Ann E. Canady	✓	✓	✓	WF
6. Coy Allen Clerk, Deputy Foreman	✓	✓	✓	WM
7. Margaret L. Coughenour	✓	✓	✓	WF
8. Elaine D. Davidson				
9. Dorothy Dorer	✓	✓	✓	WF
10. Diane E. Schuler	✓	✓	✓	?F
11. Marjorie L. Johnson	✓	✓	0	??
12. Irvin Hendrick	✓	✓	✓	BM
13. Francis P. Horner	✓	✓	✓	WM
14. Leroy R. James	✓	✓	✓	WM
15. Robert C. Kelton	✓	✓	✓	WM
16. Horace F. Lancaster	✓	✓	✓	BM
17. Elisa M. Lilienthal	✓	✓	✓	OF
18. Cecil F. Mohler, Jr.	✓	✓	✓	WM

	13	14	15	
19. Clifford M. Parker	✓	✓	✓	WM
20. Patricia L. Phillips	✓	✓	✓	WF
21. Rosemary K. Rainey	✓	✓	✓	WF
22. Mary G. Ripley	✓	✓	✓	WF
23. Joseph G. Shimandle	✓	✓	✓	WM
24. Pecolia Y. Smith	✓	✓	✓	BF

F = 11

M = 11.

W = 17

B = 3

GRAND JURY - JANUARY 9, 1979

1. Thomas D. Anthony 15 ✓	WM
2. Mattie M. Baynard 12 ✓	BF
3. Frank W. Black	WM
4. Morris W. Branch 2 ✓	WM
5. Harvey W. Brown 21 ✓	BM
6. James W. Burgess	WM
7. Steven A. Carila	WM
8. Connie D. Chay	WF
9. William R. Coleman	WM
10. Harold W. Danklefs, Deputy Foreman ✓	WM
11. Henry R. Defelice 9 ✓	WM
12. James E. Downs 10 ✓	WM
13. Annette G. Ebron	
14. Belva L. T. Eure 7 ✓	WF
15. Richard H. Fitton, Jr.	
16. Betty B. Freeland	
17. Ava L. Gilman 3 ✓	WF
18. Martha Connell Green	
19. Harold L. Hagans 11 ✓	BM

20. Frances M. Holland	17✓	WF
21. Dale C. Hudson		
22. Pamela P. Gray	5✓	
23. Gladys N. James	13✓	WF
24. Lucille King Johnson		BF
25. Robert G. Joynes	8✓	WM
26. James D. Kirchner		
27. Linda J. Latta		
28. Herbert L. Ling	1✓	WM
29. Gladys H. Major	19✓	BF
30. James L. McMillan	4✓	WM
31. Linda S. Massengill		
32. Joyce L. Miller		
33. Edward H. Morgan	16✓	WM
34. Lois Napier	14✓	WF
35. Ralph W. Oliver, Jr.		
36. Irene Patterson		
37. Roay N. Pierce	Excused	
38. Joseph Preziotti, Jr.	✓	WM
39. Robert W. Roach	18✓	WM
40. Evelyn D. Sanderson	6✓	BF

41. James H. Scott 20 ✓ WM

42. Thomas M. Smith

43. Frank G. Stevens, Jr.

44. Myron R. Tauchen

45. Benjamin W. Ward

46. Bessie D. Williams

47. Morris V. Winston

48. ~~Annie M. Credle~~ Absent ~~BF~~

49. Tamara D. Updegraff Moving WF

F = 12

M = 18

W = 23

B = 6

Jurors not serving excused subject to call.

Net = 23 jurors serving reported
1/9/79 and 1/10/79

GRAND JURY - JANUARY 14, 1979

	14	15
1. Louis G. Plummer, Foreman	✓✓	WM
2. William H. Barba, Deputy Foreman	✓✓	WM
3. Walter H. Bell	✓✓	?M
4. Ivison H. Buchanan	✓✓	WM
5. John T. Camper	✓✓	WM
6. James W. Cole	✓✓	WM
7. Arthur D. Cross	✓✓	WM
8. Paul L. Duke	✓✓	WM
9. Helen L. Elliott	✓✓	BF
10. Gerald A. Kentress	OO	WM
11. John E. Foxwell	✓✓	WM
12. Albert R. Hartley	✓✓	WM
13. Gwendolyn F. Johnson	✓✓	?F
14. Gordon R. Joyner	✓✓	WM
15. Richard C. Klein	✓✓	WM
16. Lonnie P. Longtin	✓✓	WM
17. Bennie L. Marshall	✓✓	BF
18. Kathleen W. Myron	✓✓	WF
19. Raymond S. Orne	✓✓	WM

20. Marthyn M. Quinn	14 15 ✓ ✓	WF
21. Sylvester G. Richardson	✓ ✓	WM
22. Winifred J. Snyder	✓ ✓	WF
23. Nancy R. O. Wright	✓ ✓	WF

F = 7
M = 16

W = 18
B = 2

GRAND JURY - MARCH 26, 1979

1. Lillie H. Barkow		WF
2. James H. Biggs	Excused	BM
3. Mary Ann Cahill		WF
4. Richard A. Cook		WM
5. Lavon G. Curles		WM
6. Wanda Marie Dayton		WF
7. Ted R. Draughn		WM
8. John A. Feres, Foreman		WM
9. Frances A. Golding		WF
10. Shirley R. Gurganus		WF
11. Benjamin Harris		?M
12. Columbus Hill, Deputy Foreman		
13. LeRoy H. Jacobs		WM
14. Emma R. Kennedy		WF
15. Mary Lee McElhiney		WF
16. Norma L. Patterson		WF
17. Herman Shepard Riley		WM
18. Alma W. Saunders		BF
19. William H. Sheavly		WM
20. Abby J. Thompson	Reserve	

21.Robert H. White, Jr.	WM
22.James M. Wunderle, Jr.	WM
23.Theresa L. Fremd Excused	WF
24.Vonzola M. Johnson Absent	BF
25.Martha C. Langhorne	BF
26.Lester L. Liverman Reserve	WM
27.Margaret E. Smith	WF
28.Clara L. Tyler	WF

F = 14

M = 12

W = 21

B = 4

GRAND JURY - JUNE 8, 1981

1. Eugene P. Lanning, Foreman	WM
2. Richard L. Limerick, Deputy Foreman	WM
3. Willie Barber	?M
4. Brenda L. Battle	BF
5. John D. Brockman	WM
6. Josie F. Davis	BF
7. Marion L. Dillard	WF
8. Mary L. Earley	BF
9. James W. Evans	BM
10. Jean O. Flaherty	?F
11. Marion H. Green	BF
12. Donna C. Hollowell	?F
13. Brenda J. Hudson	BF
14. Frank L. Jamison, Jr.	WM
15. Sheila F. Magee	WF
16. Mildred Norman	BF
17. Albert Padilla	MM
18. Robert W. Rhodes, Jr.	WM
19. Delores E. Rodman	WF
20. Herman D. Sawyer	WM

21. Eunice B. Shaw	BF
22. Annie B. Taylor	WF
23. Lawrence E. Towndrow	WM

F = 13
M = 10

W = 11
B = 8

GRAND JURY - JUNE 10, 1980

1. Gerhard W. Schlierf, Foreman	WM
2. Donald R. Evans, Deputy Forman	WM
3. Martha J. Baugher	WF
4. Joseph A. Bradshaw	WM
5. Elbridge J. Brown	WM
6. Robert E. Chapman	WM
7. Bruce D. Crawford	WM
8. Virginia S. Darden	BF
9. Margie E. Durham	WF
10. Cora W. Flemming	BF
11. William E. Glenn	BM
12. Ralph A. Hardy	WM
13. Russell Johnson, Jr. Absent	BM
14. Michael W. Kittrell	WM
15. Virginia A. McCormick	WF
16. Paul S. Manby	WM
17. Reuben L. Miller	BM
18. Therese Richards	WF
19. Carl M. Rose	WM

20. Carlton W. Spruill	WM
21. Doris K. Thompson	BF
22. Edward R. Ullom, III	WM
23. Charlie B. Ward	WM

F = 7
M = 16

W = 17
B = 6

GRAND JURY - MARCH 8, 1982

1. Joseph H. Simons, Jr., Foreman	BM
2. Diana M. Hickman, Deputy Foreman	WF
3. Alistelle P. Bloom	WF
4. Archie L. Bradford	WM
5. Jean J. Brooks	BF
6. Gloria B. Bunting	WF
7. Lenora Chirsitan	?F
8. Luke Constatnimdes	WM
9. Particia H. Davis	WF
10. Betty G. Doll	WF
11. Barbara B. Fuller	BF
12. Edith R. Harrison	Ill
13. Lorine C. Hull	WF
14. C. R. Jennette	WM
15. Debra A. Mallon	?F
16. Joyce K. Martin	BF
17. Melba M. Miller	WF
18. Mary Lou Nichols	?F
19. Agnes H. Peffer	WF

20. Norman Potts	WM
21. Marjorie L. Steed	WF
22. Donald R. Townes	BM
23. Fern Williams	WF

F = 16
M = 6

W = 14
B = 5

Excused subject to call

GRAND JURY - APRIL 14, 1982

1. Betty D. Romulus, Foreman	WF
2. Garland E. Jackson, Deputy Foreman	?M
3. Thomas A. Baskerville	BM
4. Raymond V. Bierbaum	WM
5. Richard M. Byrd	WM
6. Clifford J. Cowley	WM
7. Margaret P. Dewald	WF
8. Samuel M. Ellyson	WM
9. Particia B. Filipowski	WF
10. Catherine B. Hobbs	WF
11. Alvah V. Jones	BM
12. Cassie A. O'Brien	WF
13. Deborah Parker	
14. Jean K. Pfaehler	
15. Almer E. Plemons	WM
16. Bernice Reynolds	WF
17. Dorothy R. Shepherd	WF
18. Erma L. Smith	BF
19. Hazel S. Stringfellow	WF
20. Hazel D. Tyler	WF

21. Donna K. West

WF

22. Jeffrey G. Wilda

?M

F = 11
M = 9

W = 15
B = 3

GRAND JURY - APRIL 27, 1982

1. Charles R. Kilmon, Foreman	WM
2. Cecilia D. Vail, Deputy Foremen	WF
3. Evelyn C. Allen	WF
4. Nancy F. Besso	WF
5. Anna S. Brink	WF
6. Terry W. Brumley	WM
7. Milton Crawford	DM
8. Carlton M. Davenport	WM
9. Caroline T. Diniz	OF
10. Marvin B. Frye	WM
11. Nancy O. Hart	WF
12. George E. Higson, Jr.	WM
13. Geraldine H. Jones	WF
14. Charles M. Jordan	WM
15. Sharon D. McRae	BF
16. Thomas L. Musser	WM
17. Leonard W. Saunders	WM
18. Elbert W. Sherrill	WM
19. Irene M. Smith	?F
20. Mary L. Spurgeon	WF

21. Margaret G. Sullivan	WF
22. Sylvia J. Thomson	WF
23. Kenneth Williams	BM

F = 12

W = 11

W = 18

B = 3

AUGUST 9, 1976 - FEBRUARY 14, 77

1. Hermine B. Alhea, Deputy Foreman	BF
2. C. William Blake	?M
3. William C. Britton	WM
4. Shirley Adams Burney	WF
5. Rodney Miles Coleman	WM
6. Eugene W. Crisp, Sr.	WM
7. Samuel M. Derr	WM
8. Fred M. Flanary	WM
9. William M. Garrett, Foreman	WM
10. Felton S. Graham	WM
11. William C. Holloway	WM
12. William C. Keatts	WM
13. Ralph D. Lane	WM
14. Joan M. Lipka	WF
15. Lawrence J. Marr	WM
16. Hampton L. Meskins	BM
17. Pearl T. Moore	WF
18. Richard Ogle	WM
19. Charles W. Robertson	WM
20. Estes D. Sanders	WM

21. Maurice L. Sison	WM
22. Frank A. Tolliver	BM
23. Gary Q. Williams	WM

M = 19

F = 4

August, 1977 - July, 1978

1.	Mattie B. Armstead	B F
2.	Paul W. Bassett, Sr. Dep. Foreman	W M
3.	Elmo H. Bloxom Foreman	Unk. M
4.	Alnen J. Christensen	Unk. M
5.	Wilbur H. Crawford	W M
6.	Lawrence A. Deaner	W M
7.	James F. Dunn	W M
8.	William E. Ferguson	W M
9.	Shirley Mae Barcia	W F
10.	Regina R. Holmes	B F
11.	Wilbur M. Hurst	W M
12.	Terry R. Johnson	W M
13.	Nancy T. Kent	W F
14.	Martha D. Leclere	W F
15.	Edward C. Lumpkin	W M
16.	Julian D. McClenney	B M
17.	Stephen Miller (Excused by Court)	B M
18.	Joy L. Mettey	W F

19.	Rebecca A. Osborne	W F
20.	Shirley D. Peters	W F
21.	James A. Pucci (Excused by Court)	W M
22.	Robert G. Robb, Jr.	W M
23.	Alice M. Toliner	B F
24.	Janey P. Webb	B F
25.	Joyce Y. Williams	B F

M = 12

F = 11

August, 1978 - 1979

1.	William A. Bailes	W M
2.	David Lee Bell	W M
3.	Elizabeth Boyd	W F
4.	Joseph T. Bulatewicz	W M
5.	Helen Jones Carter	W F
6.	James W. Cofer	Unknown
7.	Blaine B. Franklin	W F
8.	Thomas F. Goshell Deputy Foreman	W M
9.	Gladys H. Hardwicke	W F
10.	Pamela Ann Ingram	W F
11.	Marvin D. Jones	B M
12.	Laura D. Knight	B F
13.	Faye Thomas Lemon	B F
14.	Calvin M. Marder - Race	Unknown M
15.	Ruth N. McKeller	B F
16.	Bessie James Moore	B F
17.	John F. Newcomb Forman	W M
18.	R. M. Parker	W M

19.	William David Sawyer	W M
20.	Faye L. Shrewsbury	W F
21.	Lorraine E. Waida	W F
22.	Dora M. Wilson	B F

M = 9

F = 12

Grand Jurors - Reporting for Service
February 11, 1980

1.	William W. Adams	W M
2.	Ann A. Atkins	W F
3.	Lester M. Breen	W M
4.	G. E. Burcher	W M
5.	Phillip E. Carter Foreman	W M
6.	William J. Coley	W M
7.	Fannie S. Curtis	W F
8.	Robert C. Driver	B M
9.	Robert M. Epstein	W M
10.	William E. Francis	B M
11.	Susan J. Glasheen	W F
12.	James H. Hutcheson	B M
13.	Pereuna Johnson - Absent	B F
14.	Thomas H. Kennedy	W M
15.	Mary A. Lenning	W F
16.	Mae F. McGough	W F
17.	Jerry L. Parker	W M
18.	Mildred Brickey Pierce Deputy Foreman	W F

19.	Betty A. Schuler	W F
20.	Clyde L. Smith	W M
21.	Vernie C. Taylor	W M
22.	Eugene W. Tysor (Marked off List)	W M
23.	Jimmie E. Waters	W F

M=14

F=9

81-1

Foreman - Charles R. Kilman M W

Deputy Foreman - Cecilia D. Vail F W

81-2

Foreman - Betty D. Romulus F W

Deputy Foreman - Garland E.

Jackson-Race Not Named M

Rollingwood Avenue, VB
(White Area)

81-3

Foreman - Joseph H. Simmons, Jr. M B

Deputy Foreman - Diane M. Hickman F W

80-1

Foreman - Gerhard W. Schlierf M W

Deputy Foreman - Donald R. Evans M W

80-2

Foreman - Eugene P. Lanning M W

D. Foreman - Richard L. Limerick M W

APPENDIX E
BEFORE THE REVIEWING PANEL
OF THE FOURTH CIRCUIT

In the Matter of the Review of the)
Amendment to the Jury Selection)
Plan submitted by the United States)
District Court for the Eastern)
District of Virginia)
)

Filed: July 3, 1973

ORDER

The Jury Selection Plan of the United States District Court for the Eastern District of Virginia, now in effect, is hereby modified by the amended plan shown on the eight pages attached hereto and made part of this order, and

It is so ORDERED this 12th day of June, 1973.

/s/ Chief Judge, Fourth Circuit

/s/ United States Circuit Judge

/s/ United States Circuit Judge

/s/ United States Circuit Judge

/s/ United States Circuit Judge

/s/ United States Circuit Judge

/s/ United States Circuit Judge

/s/ Chief Judge, Eastern District
of Virginia

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF VIRGINIA

No. 82-14-N

UNITED STATES OF AMERICA

v.

JAMES DANIEL ALEXANDER, et al

Filed April 2, 1982

AFFIDAVIT - CERTIFICATE

I hereby certify that the attachments (copy of this Court's Jury Selection Plan, with amendments; copy of Courtroom Clerk's Minutes of proceedings on February 8, 1982; and copy of the Grand Jury attendance record for February 8, 1982) to this affidavit-certificate are true and exact copies from the records of this Court and I further certify the selection of the Grand Jurors was by use of an Electronic Data

Processing System, pursuant to the provisions of this Court's Jury Plan.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Norfolk this 2nd day of April, A.D. 1982.

W. FARLEY POWERS, JR.,
Clerk

/s/ Chief Deputy Clerk

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA NORFOLK DIVISION

No. 82-14-N

UNITED STATES OF AMERICA

v.

JAMES DANIEL ALEXANDER, et al

Filed, April 5, 1982
Entered, April 5, 1982

O R D E R

Defendants move to quash the indictments returned by the grand jury in this case asserting that the foreman of the grand jury was improperly selected in that the records establish that for the last twenty-two grand juries convened in this division of the Court a male had been selected as foreman some nineteen times, and a female selected only about three times. However, the

record did show that a female had been selected as deputy foreman some twelve or more times.

Defendants asserted that the foreman exercised great influence over the other jurors and that the male was more persuasive than the female in returning an indictment.

The Court does not reach the question of whether the challenge to the array of the jurors, or the selection of the foreman is timely, or whether there is merit to the challenge that females have not been selected in proportion to the males, or whether male foremen are more persuasive with the other grand jurors than are females, for the foreman of the grand jury which returned the indictments against the defendants in this case was a female. See affidavit of the Deputy Clerk filed

herein by agreement of all parties.

A copy of the Jury Plan of selection of petit and grand juries, approved by the Court and by the Circuit Council is attached to the affidavit, along with a copy of the list of the grand jury of February 8, 1982, and the Clerk's minutes.

The motion being without merit is
DENIED,

Copy of this Order is forwarded to
counsel,

/s/ U.S. District Judge

A True Copy Teste:

W. Farley Powers, Jr.,
Clerk

By /s/ Deputy Clerk

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF VIRGINIA

Filed: July 3, 1973

Amended Plan Prescribing Method for
Composition of Jury Wheels And
Selection of Jurors in All Divisions
of the District in Accordance With the
Jury Selection and Service Act of 1968

The Court having on July 1, 1968, adopted a "Plan Prescribing Method for Composition Jury Wheels and Selection of Jurors in All Divisions of the District in Accordance with the Jury Selection and Service Act of 1968" and the Plan has heretofore been amended by Order of this Court on October 28, 1970 and again on July 14, 1972, it is hereby

ORDERED that the existing plan for the random selection of grand and petit jurors in effect for the Eastern District of Virginia since July 5, 1968, be and same hereby is amended and

adopted by this Court as follows, subject to the approval by a reviewing panel and to such rules and regulations as may, from time to time, be adopted by the Judicial Conference of the United States.

Policy

It is the policy of this Court that all litigants entitled to trial by jury shall have the right to a jury venire initially selected at random from a cross-section of the community in the area surrounding the location where the court is convened, and that all qualified citizens shall have the opportunity to be considered for service on grand and petit juries, and shall have the obligation to serve as jurors when summoned for that purpose. The use of the word "court" in this order shall contemplate the full court, or any

judges thereof. The phrase "location where court is convened" shall embrace the cities and counties within the separate divisions as now or hereafter established by local rule.

Discrimination Prohibited

No citizen shall be excluded from service as a grand or petit juror on account of race, color, religion, sex, national origin or economic status.

Management of Jury Selection Process

The Clerk of Court shall manage the jury selection procedures under the supervision and control of the Chief Judge of this District.

Disclosure of Names of Jurors

Upon qualification, the entire list of names drawn from the Qualified Juror Wheel may be disclosed to counsel for the parties or to any party acting pro se, unless the Court directs otherwise.

As for jurors assigned for service on particular cases or particular days, disclosure shall not be until three days prior to the trial date; provided the Court may, in any case, keep such names confidential for such period of time as the interest of justice may require.

Random Selection

Voter registration lists represent a fair cross-section of the community in the Eastern District of Virginia. The Clerk may select names from the voter registration lists from each county and city located within the respective divisions of this Court through the use of a properly programmed data processing system.

A. Manner of Selection - After determining total number of registered voters for all counties and cities in a

a division, the Clerk will divide that number by the number of names needed for the Master Jury Wheel. The result is referred to herein as the "quotient". The quotient is the ratio of selected to unselected names.

B. Determining a Starting Number -

After determinig the quotient, the Clerk shall establish a starting number. This number will locate on the voter registration lists the first name to be selected. The starting number will be manually drawn by lot from numbered cards or disks placed in a jury drum or box. Cards or disks used for this drawing should begin with a card or disk containing number one and end with a card or disk containing the same number as the "quotient".

C. Use of Electronic Data Processing System - A properly programmed

electronic data processing system may be used to select names from voter registration lists of any or all cities and counties in the respective divisions in the district, provided that the required proportions of names for each county and city are maintained and that the above described quotient and starting number formula is followed. Where a machine does the selecting of names it must be programmed first to accept a specific instruction as to what "starting number" and "quotient" formula is to be used and secondly to perform a proportionately balanced selection and retrieval of names precisely according to that formula.

Master Jury Wheel

The Master Jury Wheel into which all names and addresses of those randomly selected from voter registration

lists from each county and city within the respective divisions of this district are to be placed may consist of a revolving drum, drawers of file cabinets or electronic data, storage devices such as punched cards, magnetic tapes or magnetic disk files.

The number of names to be placed in each Master Jury Wheel shall be as follows:

1. Alexandria, Norfolk and Richmond Divisions- approximately fifteen thousand names in each division, but in no event less than one half of one percent of the total registered voters for the designated cities and counties,

2. Newport News Division - approximately eight thousand names, but in no event less than one half of one per cent of the total registered voters for the designated cities and counties.

(See Rules of Court for cities and counties in each division.)

The Court may order additional names to be placed in the Master Jury Wheel or Qualified Juror Wheel if and When needed.

Drawing of Names from Master Jury
Wheel or Tape

From time to time, as directed by the Court, the Clerk, or Deputy Clerk if the Clerk is not available, shall publicly draw from the Master Jury Wheel the names and addresses of persons to whom questionnaires will be sent as may be required for service for a particular period. An alphabetical list of the names drawn shall be prepared. The Clerk shall cause to be mailed to every person whose name is so drawn, a juror qualification form, with instructions to fill out and return the form, duly

signed, by mail within ten (10) days.

1. For any of these drawings names will be taken by using the same randomized selection formual described hereinabove as follows: The total number of names to whom questionnaires will be sent shall be divided into the total number of names in the Master Jury Wheel of each division of this Court to determine a "quotient" and that quotient will be used in determining the starting numbers. The names so selected shall be listed in alphabetical order.

2. After completed questionnaires are returned by prospective jurors these will be reviewed by the Clerk.

3. Any person who fails to return a juror qualification form as instructed may be summonsed by the Clerk

to appear and fill out such forms; provided that any person who returns an executed juror qualification form by mail, and who is subsequently summoned for service on grand or petit jury, may be required by the Clerk to fill out another juror qualification form. Any person who fails to appear as directed, or who appears to have wilfully misrepresented a material fact on a juror qualification form for the purpose of avoiding service as a juror, shall be ordered by the court to appear and make such explanation, if any he can, as to his failure to appear and/or his alleged misrepresentation on the juror qualification form.

Qualified Juror Wheel

The Qualified Juror Wheel may consist of a revolving drum, drawers

of file cabinets, magnetic tapes or magnetic disk files, into which shall be placed the names of all persons drawn at random from the Master Jury Wheel who are deemed to be qualified as jurors and not exempt, excluded or excused.

The names of grand and petit jurors for each division shall be publicly drawn from a Qualified Juror Wheel containing the names of not less than 300 qualified persons in such division at the time of each drawing. After drawing names for jury service for a specified period from the Qualified Juror Wheel, the Clerk is authorized to select alphabetically, if practicable, the jurors directed to report for particular dates or series of dates. The Clerk shall have the

power to temporarily excuse the chosen jurors if a reasonable excuse is given, such as a planned vacation, an important business meeting, or other similar event that would cause inconvenience to the juror if required to report for jury service on a particular date or dates. Those jurors so excused shall be ordered by the Clerk to report for jury service at another time during their tenure, so as to provide for approximately equal distribution of time among the members chosen for jury service during the period for which the jurors were called to serve. Once a juror has been selected and has served for his entire designated period of service, not to exceed a total of thirty (30) days except when necessary to complete service in a particular case, his name shall not be re-

turned to the Qualified Juror Wheel.

The Clerk shall prepare a list of names of persons drawn for service on grand and petit juries for the period of their service. He shall issue summons for the required number of jurors and deliver them to the Marshal for service. Each person drawn for jury service may be served personally or by registered or certified mail, addressed to such person at his usual residence or business address. Such service shall be made by the Marshal who shall attach to his return the addressee's receipt for the registered or certified summons, where service is made in that manner by mail. Nothing herein contained shall be construed as requiring the issuance or service of any summons other than for the first day of any specified period of

of service, which date may be continued by order of Court. Jurors serving on individual days may be excused by the Court or Clerk to a specified date in the future, if within the date of the overall period of service.

Juror Qualification Form

Questionnaires as to qualification for jury service, as prescribed by the Administrative Office of the United States Courts and as from time to time revised, shall be used to elicit the information necessary to determine whether a person is qualified for, exempt from, or excused from jury service. The Court or Clerk may require additional information. The questionnaire shall be forwarded to such prospective jurors whose names are drawn from the Master Jury Wheel to be

placed in the Qualified Juror Wheel.
Emptying and Filling of Master and
Qualified Juror Wheels

The Clerk is hereby directed to empty and refill the Master Jury Wheel in each division of this court as provided in this plan between May 15 and August 15 of every fourth year hereafter, commencing between May 15 and August 15, 1973, and every fourth year thereafter.

The Qualified Juror Wheel shall be emptied and refilled pursuant to the procedures herein set forth between August 15 and October 1 of every year beginning August 15 to October 1, 1973.

Qualifications to Serve

Any person shall be deemed qualified to serve on grand or petit juries

in this court unless the person is

1. not a citizen of the United States, eighteen years old, who has resided for a period of one year within the judicial district;

2. is unable to read, write and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;

3. is unable to speak the English language;

4. is incapable, by reason or mental or physical infirmity, to render satisfactory jury service; or

5. has a charge pending against him for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year

and his civil rights have not been restored by pardon or amnesty.

If Congress creates additional disqualifications, any person falling within such category shall be deemed disqualified to serve on grand and petit juries in this Court. Only objective criteria may be used to determine whether any person has satisfied any qualification for jury service or whether a basis exists for exempting or excusing any person from jury service.

Exclusion, Excuse or Exemption from Jury Service

Except as provided herein, no person or class of persons shall be excluded, excused or exempt from service as jurors; provided that any person summoned for jury service may be (1) excused, as the Court may direct, upon

a showing of undue hardship or extreme inconvenience, or (2) excluded by the Court upon a finding that such person may be unable to render impartial jury service, or that his service as a juror would be likely to disrupt the proceedings, or (3) excluded upon peremptory challenge by any party for good cause shown, or (4) excluded upon a challenge by any party for good cause shown, or (5) excluded on determination by the Court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of the jury deliberations, or (6) excluded on determination by the Court upon a challenge by a party, or sua sponte, that such a person is unable, for cause other than physical infirmities, to fill out a jury quali-

fication form, or is otherwise not qualified for service pursuant to law. Whenever a person is exempted, excused or excluded, except for causes set forth under clause (2), (3), (4) or (5) of this paragraph, he shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury. Whenever a person is exempted, excused, or excluded from jury service, the Clerk of the Court shall not in the space provided on his juror qualification form the specific ground of exemption, excuse of exclusion.

Automatic Exemptions from Jury Service

The exemption of members of the following occupations classes or groups of persons is in the public in-

terest, consistent with law, and shall be automatically granted:

(1) Members in active service in the armed forces of the United States.

(2) Members of the active five, police or law enforcement departments of any country, state, district, territory, possession or subdivision thereof.

(3) Public officers, as defined by statute, in the executive, legislative or judicial branches of the government of the United States, or any state, district, territory, possession or subdivision thereof, who are actively engaged in the performance of official duties.

Excuses from Jury Services on Request

Since jury service by the members of the following occupational classes or groups of persons would en-

tail undue hardships, extreme inconvenience, or serious obstruction or delay in the fair and impartial administration of justice, the excuse of such members would not be inconsistent with law, and may be granted by the Court or Clerk if individually requested:

(1) All persons over 70 years of age.

(2) All ministers of the gospel primarily engaged in the active discharge of their ministerial duties.

(3) All physicians, dentists, and attorneys engaged in actual practice.

(4) All registered, practical or vocational nurses actively engaged in the practice of their profession.

(5) Any person who has served as

a grand or petit juror in a federal court within the preceding two years, or who has served as a grand or petit juror in a state court within the preceding one year.

(6) All registered pharmacists actively engaged in the practice of their profession.

(7) All licensed morticians actively engaged in the practice of their profession, and any other personnel needed to conduct funeral services.

(8) All school teachers, which shall include public, parochial and private school teachers, engaged in the active teaching of children.

(9) All females having legal custody of a child or children the age of twelve or under.

(10) The spouse of any person who is summoned to serve on the same jury panel.

(11) Any prospective juror residing at least 35 miles from the place of holding court whose service, in the discretion of the Court only, would entail undue hardship or extreme inconvenience.

(12) Duly licensed commerical maritime pilots and seamen actively engaged in the practice of their occupation.

(13) Persons actively and physically engaged in the movement of vehicles, aircraft, trains and vessels in interstate and foreign commerce.

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

Dated: May 29, 1973

BEFORE THE REVIEWING PANEL
OF THE FOURTH CIRCUIT

In the Matter of the Review of the
Amendment to the Jury Selection Plan
Submitted by the United States
District Court for the Eastern
District of Virginia

ORDER

The Jury Selection Plan of the
United States District Court for the
Eastern District of Virginia, now in
effect, is hereby modified by the
amended plan shown on the one page
attached hereto and made part of this
order, and

It is so ORDERED this 11th day
of January, 1977.

Chief Judge, Fourth Circuit

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

Chief Judge, Eastern Dis-
trict of Virginia

Filed Jan. 17, 1977
U.S. Court of Appeals
Fourth Circuit

A True copy Teste;

William K. Slate, II, Clerk

By _____
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Filed November 16, 1976

ORDER

By and with the consent of the Circuit Council, it is ORDERED that the "Plan Prescribing Method for Composition of Jury Wheels and Selection of Jurors in All Divisions of the District in Accordance with the Jury Selection and Service Act" adopted July 1, 1968, amended by Orders of October 28, 1970, July 14, 1972, and May 29, 1973, be further amended to provide:

that the Clerk shall empty and refill the Master Jury Wheel in each Division of this Court between May 15 and August 15 of every other year commencing with the period of May 15 to August 15, 1977.

It is further ORDERED that copy of this amendment be forwarded to the Circuit Council, the Administrative Office of the United States Courts, the Attorney General of the United States, and that copy be filed in the Clerk's Office of each division of this Court, and that it shall become effective upon it's being filed with the Clerk of this Court.

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

DATED November 16, 1976

BEFORE THE REVIEWING PANEL
OF THE FOURTH CIRCUIT

In the Matter of the Review of the
Amendment to the Jury Selection
Plan Submitted by the United States
District Court for the Eastern
District of Virginia.

ORDER

The Jury Selection Plan of the
United States District Court for the
Eastern District of Virginia, now in
effect, is hereby modified by the
amended plan shown on the one page
attached hereto and made part of this
order, and

It is so ORDERED this 8th day of
February, 1980.

Chief Judge, Fourth Circuit

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

United States Circuit Judge

Chief Judge, Eastern Dis-
trict of Virginia

FILED: Feb. 8, 1980
U.S. Court of Appeals
Fourth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

FILED Mar. 10, 1980

ORDER

By and with the consent of the Circuit Council, it is ORDERED that the "Plan Prescribing Method for Composition of Jury Wheels and Selection of Jurors in All Divisions of the District in Accordance with the Jury Selection and Service Act" adopted July 1, 1968, amended by Orders of October 28, 1970, July 14, 1972, May 29, 1973 and November 16, 1976, be further amended to provide that provision under "Excuses from Jury Service on Request" identified in paragraph (9) therein, be and same hereby is amended to read as follows:

Persons having active care and custody of a child or children under 10 years of age whose health and/or safety would be jeopardized by their absence for jury service; or a person who is essential to the care of aged or infirmed persons.

It is further ORDERED that copy of this amendment be forwarded to the Circuit Counsel, the Administrative Office of the United States Court, the Attorney General of the United States, and that copy be filed in the Clerk's Office of each Division of this Court, and that it shall become effective upon it's being filed with the Clerk of this Court.

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

United States District Judge

DATED March 10, 1980

Newport News Division

Monday, February 8, 1982

Minutes of Proceeding in Open Court

Present: Honorable Richard B. Kellam

Re: Grand Jury Proceedings

Following Grand Jury Approval

1. Susan M. Butler - Foreman

2. Stanley S. Hicks - Deputy

Forman

3. Shirley S. Aikon

4. George T. Bats

5. Sherwood L. Evans

6. Emily K. Fournew

7. Ada Morris Gay

8. Florence Fay Griffin

9. Dorothy T. Howell

10. Jerry R. Karwac, Jr.

11. Herbert Hoow Lake

12. Rawleigh J. Linkous

13. John H. Midkiff
14. Elva Ann St. Clair O'Neal
15. Stephen Peters
16. Garland F. Gilloman
17. Leonard C. Richarson
18. Thomas W. Russell, Jr.
19. Louis S. Silverman
20. Henry B. Sudduth
21. Maxwell S. Torgerson
22. Susan M. Townsend

All Grand Jurors heretofore sworn
retired to begin their considerations
returning late with the following
presentments:

U.S. v. James Daniel Alexander,
a/k/a J.D.

U.S. v. Thomas Glen Flowers

U.S. v. Steven Thomas McMahan

U.S. v. Alan Dale Phillips

U.S. v. Stephen Deveaux Ravenel, Jr.

U.S. v. Dale Thomas Strouse

U.S. v. Gary Sokoloff

U.S. v. Terrance Sokoloff, a/k/a

D. Terry Michaels.

Newport News Division

Monday - February 8, 1982

Minutes of Proceedings in Open Court

Present: Honorable Richard B. Kellam

Grand Jury Proceedings (cont'd)

On motion of U.S. Attorney, Court directed Bench Warrants issued for defendants, Alexander, bond \$75,000.00 (surety); Flowers, bond \$200,000.00 (surety); McMahon, bond \$75,000.00 (surety); Phillips, bond \$75,000.00 (surety); Strause, bond \$200,000.00 (surety) and Terrence Sokoloff bond \$200,000.00 (surety).

U.S. v. Jerry Morgan Brown

U.S. v. James Larry Grainger

U.S. v. Randolph Freeman

U.S. v. Raymond Vernon Williams

U.S. v. Joseph Donald Alexandro

a/k/a , etc.

U.S. v. Kenneth Parker

On motion of the U.S. Attorney,
above indictments are transferred to
the Norfolk Division for docketory
and trial and indictment against defts
Alexender, Flowers, McMahon, Phillips,
Strouse, Gary Sokoloff and Terrence
Sokoloff be sealed.

U.S. v. Robert Duane Praml

U.S. v. Leonard H. Lockhart

U.S. v. Anthony George Kelly

Cavall

Grand Jurors excused subject to call

Grand Jury

February 8, 1982

Attendance - 22

1. Shirley S. Aiken
2. George T. Bata
3. Susan McCann Butler...Foreman
4. Sherwood L. Evans
5. Emily K. Fournier
6. Ada Morris Gay
7. Florence Fay Griffin
8. Stanley S. Hicks...Deputy Foreman
9. Dorothy T. Howell
10. Jerry R. Karwac, Jr.
11. Herbert Hoover Lake
12. Rawleigh J. Linkous
13. John H. Midkiff
14. Elva Ann St. Clair O'Neal
15. Garland Flem Prillaman
16. Stephen Peters

18. Thomas W. Russell, Sr.
19. Louis S. Silverman
20. Henry B. Sudduth
21. Maxwell S. Torgersen
22. Susan M. Townsend

APPENDIX F

CONSTITUTIONAL PROVISIONS

Sixth Amendment, United States
Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for the defense.

STATUTORY PROVISIONS

Title 28 U.S.C. 1861. Declaration

of policy:

It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes, It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose.